IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5802 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

S P SHAIKH

Appearance:

MR UI VYAS for the Petitioner.

MR GK RATHOD for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 02/08/2002

ORAL JUDGEMENT

Rule. Mr.Rathod waives service of rule on behalf of the respondent.

With the consent of the parties, the matter is taken up for final hearing today.

The respondent-workman had raised an Industrial Dispute, which was numbered as Reference (IT) No.629 of 1998. By raising the said dispute, he had challenged the punishment order passed by the S.T. Authority, by which two increments were withheld by the S.T. Corporation with future effect. The said punishment was imposed after the conclusion of the Departmental Enquiry and the enquiry was initiated against him on the ground that he had killed one person while he was crossing road. The Industrial Tribunal, Nadiad, while deciding the said Reference, came to the conclusion that since there is no evidence to prove the said misconduct, the penalty of withholding of two increments with future effect is required to be quashed and set aside, and, ultimately, the said penalty was set aside. The said order is impugned at the instance of the S.T. Corporation.

Mr.U.I. Vyas, learned Advocate for the petitioner, submitted that because of the rash and negligent driving of the respondent, one innocent person lost his life. He submitted that, even in the past, at so many times, the respondent was found to be negligent in driving the vehicle. As per the past record, in 1979, he killed one lady, named Madhuben Patel, at the time of driving the bus. That part of the record is produced at page 37. Therefore, he submitted that it is not a case in which the Industrial Tribunal should have interfered with the punishment imposed.

Against the said argument, Mr.Rathod appearing for the respondent-workman, submitted that since the misconduct is not proved in the enquiry and as per the evidence on record, it cannot be said that the respondent was guilty in any manner, the order of the Labour Court is not required to be interfered with. However, ultimately, it is submitted that in case this Court finds that there was some negligence on the part of the respondent, he is willing to accept whatever reasonable penalty the Court thinks fit to impose. He also submitted that since the respondent is at the fag end of his career, he will be satisfied that instead of allowing him to drive heavy vehicle, if any other light work in the same category is given to the respondent-workman by protecting his pay and by absorbing him in any other equivalent post.

I have heard both the sides in detail. In my view, and considering the past record of the petitioner, it would be just and proper if the petitioner-Corporation is directed to allot any other work to the respondent by

protecting his pay as Driver, by giving the work of the Helper or any other equivalent post.

In the facts and circumstances of the case, in my view, instead of upholding the order of withholding of two increments with future effect, which the disciplinary authority passed, it would be in the fitness of things to subject the respondent-workman to the penalty of withholding an year's increment for a period of three years.

It is clarified that so far as the order in question is concerned, it is passed with the consent of the respondent-workman.

Whatever benefit is required to be given to the respondent-workman as per the modified order may be given to the concerned workman within a period of two months from today.

With this modification in the penalty, this matter is disposed of. Petition is partly allowed to the aforesaid extent. Rule is made absolute accordingly with no order as to costs.

(P.B. Majmudar, J.)

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(apj)